

The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that jurisdiction's tax will be incurred. See 86 Ill. Adm. Code 270.115. (This is a GIL.)

January 26, 2004

Dear Xxxxx:

This letter is in response to your letter dated January 13, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

This letter is regarding a GIL you drafted for sales and use tax treatment of modular home sales in Illinois (IL). A copy of that GIL is enclosed.

In the third paragraph on page 3 of the GIL you address the situation where the seller does not have a contract to permanently affix the modular home to real estate. In such cases, you state that the IL purchaser will owe use tax and the out of state seller would generally collect and remit that tax (presumably if they have nexus).

Can you clarify what the tax base is that the use tax is calculated on? Is it a fixed percentage of the home sale (50%, 100%, etc.)? Or is it a portion of the sales price that represents the sellers cost of materials?

Thank you in advance for your assistance. Please call me with any questions.

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. The tax is

based on the amount of gross receipts received by the retailer on the sale of that property. "Gross receipts" means all the consideration actually received by the seller, except traded-in tangible personal property. See 86 Ill. Adm. Code 130.401. Persons who purchase tangible personal property from retailers who do not have nexus in Illinois must pay a corresponding Use Tax based upon the purchase price of the tangible personal property.

If a purchase order is accepted outside the State, but the property being sold is located in an inventory of the retailer which is located in an Illinois jurisdiction that has imposed a local tax (see, for example, Section 270.115(b)(3)), then the location of the property at the time of sale will determine where the seller is engaged in business for the purpose of determining the imposition of applicable local sales taxes. In situations in which the retailer has nexus, but both the purchase order acceptance and the location of the property being purchased are outside of the State of Illinois, such sales would only be subject to the Illinois Use Tax at the rate of 6.25%. This would also be true of the Use Tax that the purchaser must pay directly to the Department if the retailer did not have nexus and is not required to collect the tax.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

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